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**TITLE 5. Education**  
**Division 1. State Department of Education**  
**Children with Disabilities**

**Add Article 3.5 (commencing with Section 440) to Subchapter 2 of Chapter 2 of Division 1 of Title 5 to read:**

**Chapter 2. Pupils**  
**Subchapter 2. Records of Pupils**

**Article 3.5. Confidentiality of Information about Individuals with Exceptional Needs**  
**§440. Notice to Parents.**

As part of the written explanation of procedural safeguards under the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 and following), and the rights and procedures contained in Part 30 (commencing with Section 56000) of the Education Code provided in the notice of parent rights, the confidentiality of personally identifiable information about individuals with exceptional needs shall be provided in accordance with Sections 300.127 and 300.561 of Title 34 of the Code of Federal Regulations.

NOTE: Authority cited: Section 56100(a), (i), Education Code. Reference: Sections 49060-49079, 56301, 56321, 56500.3 and 56504, Education Code; 20 USC 1221e-3, 1412(a)(8), and 1417(c); and 34 CFR 300.127, 300.500, 300.560-300.577.

**§441. Access Rights.**

(a) Pursuant to Section 300.562 of Title 34 the Code of Federal Regulations, each participating agency shall permit parents of individuals with exceptional needs, defined in Section 56026 of the Education Code, to inspect and review any education records relating to their children that are collected, maintained, or used by the agency, including test protocols containing personally identifiable information about the child. The agency shall comply with a request without unnecessary delay and pursuant to Section 56504 and before any meeting regarding an individualized education program, or any due process hearing pursuant to Chapter 5 (commencing with Section 56500) of the Education Code.

(b) For purposes of this article, “participating agency” means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Individuals with Disabilities Education Act (20 U.S.C 1400 et

1 seq.).

2 (c) The right to inspect and review education records under this section includes the  
3 following:

4 (1) The right to a response from the participating agency to reasonable requests for  
5 explanations and interpretations of the records.

6 (2) The right to request that the agency provide copies of the records containing the  
7 information if failure to provide those copies would effectively prevent the parent from  
8 exercising the right to inspect and review the records.

9 (3) The right to have a representative of the parent inspect and review the records.

10 (c) A local educational agency may presume that the parent has authority to inspect and  
11 review records relating to his or her child unless the agency has been advised that the parent does  
12 not have the authority under applicable State law governing such matters as guardianship,  
13 separation, and divorce.

14 (d) Each participating agency shall keep a record of parties obtaining access to education  
15 records collected, maintained, or used, with the exception of access by parents and authorized  
16 employees of the participating agency, including the name of the party, the date access was  
17 given, and the purpose for which the party is authorized to use the records pursuant to Section  
18 300.563 of Title 34 of the Code of Federal Regulations.

19 NOTE: Authority cited: Section 56100 (a), (i), Education Code. Reference: Section 49060,  
20 Article 5 (commencing with Section 49073), 56366.4, 56501, 56504 and 56863, Education  
21 Code; 20 USC 1232(g), 1412(a)(8), 1417(c); and 34 CFR 300.127, 300.560-577; and 34 CFR  
22 Part 99.

23 **§442. Records on More Than One Child.**

24 If any education record includes information on more than one child, the parents of those  
25 children have the right to inspect and review only the information relating to their child or to be  
26 informed of that specific information in accordance with Section 300.564 of Title 34 of the Code  
27 of Federal Regulations.

28 NOTE: Authority cited: Section 56100(a), (i), Education Code. Reference: Article 5  
29 (commencing with Section 49073) of Chapter 6.5, Part 27, Education Code; Sections 49060,  
30 56366.4, 56501, 56504 and 56863, Education Code; 20 USC 1412(a)(8) and 1417(c); and 34  
31 CFR 300.564 and 34 CFR Part 99.

1 **§443. List of Types and Locations of Information.**

2 Each participating agency shall provide parents on request a list of the types and locations  
3 of education records collected, maintained, or used by the agency pursuant to Section 300.565 of  
4 Title 34 of the Code of Federal Regulations.

5 NOTE: Authority cited: Section 56100(a), (i), Education Code. Reference: Article 5  
6 (commencing with Section 49073), of Chapter 6.5, Part 27, Education Code; Sections 49060,  
7 56366.4, 56501, 56504 and 56863, Education Code; 20 USC 1412(a)(8) and 1417(c); and 34  
8 CFR 300.565 and 34 CFR Part 99.

9 **§444. Amendment of Records at Parent's Request.**

10 (a) In accordance with Section 49070 of the Education Code and Section 300.567 of Title  
11 34 of the Code of Federal Regulations, a parent who believes that information in the education  
12 records collected, maintained, or used under Part 30 of the Education Code (commencing with  
13 Section 56000) and implementing regulations or used under the federal Individuals with  
14 Disabilities Education Act (20 U.S.C. 1400 and following) and implementing regulations is  
15 inaccurate or misleading or violates the privacy or other rights of the child may request the  
16 participating agency that maintains the information to amend the information.

17 (b) If the agency decides or refuse to amend the information in accordance with the  
18 request, the agency shall inform the parent of the refusal and advise the parent of a right to an  
19 administrative hearing under Section 49070 and in accordance with Section 300.568 of Title 34  
20 of the Code of Federal Regulations.

21 (c) The agency shall, on request, provide an opportunity for a hearing to challenge  
22 information in education records to ensure that it is not inaccurate, misleading, or otherwise in  
23 violation of the privacy or other rights of the child in accordance with Section 49070 of the  
24 Education Code and Section 300.568 of Title 34 of the Code of Federal Regulations.

25 (d) A hearing, as specified in subdivision (c), shall be conducted according to the  
26 procedures under Section 99.22 of Title 34 of the Code of Federal Regulations.

27 (e) If any explanation is placed in the records of the child as a result of a hearing  
28 specified in subdivision (c), it must be maintained by the agency as part of the records of the  
29 child as long as the record or contested portion is maintained by the agency. If the records of the  
30 child or the contested portion is disclosed by the agency to any part, the explanation must also be  
31 disclosed to the party.

1 NOTE: Authority cited: 56100(a), (i), Education Code. Reference: Article 4 (commencing  
2 with Section 49069) of Chapter 6.5, Part 27, Education Code; 20 U.S.C. 1232g(a)(2), 1412(a)(8),  
3 1417(c); 34 CFR Part 99 and 34 CFR.300.560-300.577.

4 **§445. Consent.**

5 (a) Except as to disclosures addressed in Section 300.529(b) of Title 34 of the Code of  
6 Federal Regulations for which parental consent is not required by the Family Educational Rights  
7 and Privacy Act, Part 99 of Title 34 of the Code of Federal Regulations, parental consent must be  
8 obtained before personally identifiable information is—

9 (1) Disclosed to anyone other than officials of participating agencies collecting or using  
10 the information under Part 300 of Title 34 of the Code of Federal Regulations, subject to  
11 subdivision (b) of this section; or

12 (2) Used for any purpose other than meeting a requirement of Parts 300 or 303 of Title 34  
13 of the Code of Federal Regulations.

14 (b) An educational agency or institution subject to the Family Educational Rights and  
15 Privacy Act, Part 99 of Title 34 of the Code of Federal Regulations, may not release information  
16 from education records to participating agencies without parental consent unless authorized to do  
17 so under Part 99.

18 (c) In the event a parent refuses to provide consent under this section, it is the policy of  
19 the State that access to records by persons without written parental consent or under judicial  
20 order shall be subject to Article 5 (commencing with Section 49073) of Part 27 of the Education  
21 Code.

22 NOTE: Authority cited: Section 56100(a), (i), Education Code. Reference: Section 49060,  
23 Article 5 (commencing with Section 49073) of Chapter 6.5, Part 27, 56501, 56366.4, 56504,  
24 56863, Education Code; 20 USC 1412(a)(8) and 1417(c); 34 CFR 300.562, 300.564, 300.565,  
25 300.571, 300.572, and 300.575; and 34 CFR Part 99.

26 **§446. Safeguards.**

27 (a) Pursuant to Section 300.572 of Title 34 of the Code of Federal Regulations, each  
28 participating agency shall protect the confidentiality of personally identifiable information at  
29 collection, storage, disclosure, and destruction stages.

30 (b) One official at each participating agency shall assume responsibility for ensuring the  
31 confidentiality of any personally identifiable information.

1       (c) All persons collecting or using personally identifiable information must receive  
2 training or instruction regarding the State’s policies and procedures under Section 300.127 of  
3 Title 34 and Part 99 of the Code of Federal Regulations.

4       (d) Each participating agency shall maintain, for public inspection, a current listing of the  
5 names and positions of those employees within the agency who may have access to personally  
6 identifiable information.

7 NOTE: Authority cited: Section 56100(a), (i), Education Code. Reference: Section 49060,  
8 Article 5 (commencing with Section 49073) of Chapter 6.5, Part 27, 56366.4, 56501, 56504 and  
9 56863, Education Code; 20 USC 1412(a)(8) and 1417(c); 34 CFR 300.127, 300.572 and 34 CFR  
10 Part 99.

11 **§447. Destruction of Information.**

12       (a) Each public agency shall inform parents when personally identifiable information  
13 collected, maintained, or used under Part 30 (commencing with Section 56000) and  
14 implementing regulations, the Individuals with Disabilities Education Act (20 U.S.C. 1400 and  
15 following) and implementing regulations and corresponding laws is no longer needed to provide  
16 educational services to the child.

17       (b) In accordance with subdivision (b) of Section 300.573 of Title 34 of the Code of  
18 Federal Regulations, the information must be destroyed at the request of the parents. However, a  
19 permanent record of a student’s name, address, and phone number, his or her grades, attendance  
20 record, classes attended, grade level completed, and year completed may be maintained without  
21 time limitation.

22       (c) The destruction of records shall also be carried out in accordance with Section 437  
23 of Article 3 of Subchapter 2 of Chapter 2 and Subchapter 2 (commencing with Section 16020) of  
24 Chapter 16 of Division 1 of this title.

25 NOTE: Authority cited: Section 56100(a),(i), Education Code. Reference: Section 49062,  
26 Chapter 6.2 (commencing with Section 49060) of Part 27, Education Code; Section 438, Title 5,  
27 California Code of Regulations; 20 USC 1412(a)(8), 1417(c); and 34 CFR 300.573.

28 **§448. Children’s Rights.**

29       (a) Pursuant to Section 300.574 of Title 34 of the Code of Federal Regulations, the  
30 California Department of Education will provide information to the public regarding the extent  
31 to which children are afforded rights of privacy similar to those afforded to parents, taking into

1 consideration the age of the child and type of severity of disability.

2 (b) The rights of parents regarding education records and all other rights accorded to a  
3 parent are transferred to the student at age 18 in accordance with Section 56041.5 of the  
4 Education Code, subsection (m) of Section 1415 of Title 20 of the United States Code, and  
5 subsection (a) of Section 99.5 and Section 300.517 of Title 34 of the Code of Regulations.

6 (c) The local educational agency shall, pursuant to Section 56041.5 of the Education  
7 Code and subsection (m) of Section 1415 of the United States Code, notify the student and the  
8 parent of the transfer of rights.

9 NOTE: Authority: Section 56100 (a),(i), Education Code. Reference: Section 56041.5,  
10 Education Code; 20 USC 1415(m); 34 CFR 99.5(a) and 300.517.

11 **§449. Enforcement.**

12 Pursuant to Section 300.575 of Title 34 of the Code of Federal Regulations, the  
13 California Department of Education will provide information to the public regarding the policies  
14 and procedures, including sanctions, that the State uses to ensure that its policies and procedures  
15 are followed and that the requirements of the Individuals with Disabilities Education Act (20  
16 U.S.C 1400 et seq.) and the regulations of Part 300 of Title 34 of the Code of Federal  
17 Regulations are met.

18 NOTE: Authority cited: Section 56100(a), (i), Education Code. Reference: Section 49060,  
19 Article 5 (commencing with Section 49073) of Chapter 6.5, Part 27, 56366.4, 56501, 56504 and  
20 56863, Education Code; 20 USC 1412(a)(8) and 1417(c); 34 CFR 300.575 and 34 CFR Part 99.

21 **§450. Disciplinary Information.**

22 (a) A local educational agency shall, in accordance with Sections 48900.8 and 49072 of  
23 the Education Code, Section 438 of Title 5 of the California Code of Regulations, subsection (j)  
24 of Section 1413 of Title 20 of the United States Code and Section 300.576 of Title 34 of the  
25 Code of Federal Regulations, include in the records of an individual with exceptional needs a  
26 statement of any current or previous disciplinary action that has been taken against the individual  
27 and transmit the statement to the same extent that the disciplinary information is included in, and  
28 transmitted with, the student records of nondisabled children.

29 (b) The statement, pursuant to subdivision (a), shall include a description of any behavior  
30 engaged in by the individual that required disciplinary action taken, and any other information  
31 that is relevant to the safety of the individual and others involved with the individual.

1           (c) When the individual with exceptional needs transfers from one school to another, the  
2 transmission of any of the individual's records must include both the student's individualized  
3 education program and any statement of current or previous disciplinary action that has been  
4 taken against the child in accordance with subdivision (a).

5 NOTE: Authority: Section 56100(a), (i), Education Code. Reference: Sections 48900.8,  
6 48915.5, 49072, Education Code; Section 438 of Title 5, California Code of Regulations; 20  
7 USC 1413(j); and 34 CFR 300.576 and 300.560-300.577.]

### 8

## 9                           **Chapter 3. Handicapped Children with Disabilities**

### 10   **Subchapter 1. Special Education**

### 11   **Article 1. General Provisions**

12 **Amend Section 3001 of Title 5 to read:**

### 13 **§3001. Definitions.**

14           In addition to those found in Education Code sections 56020-56033, Public Law 94-142  
15 as amended (20 U.S.C. 1401 et seq.), and Title 34, Code of Federal Regulations, Part 300 and  
16 301, the following definitions are provided:

17           (a) "Applicant" means an individual, firm, partnership, association, or corporation who  
18 has made application for certification as a nonpublic, nonsectarian school, or agency.

19           (b) "Assessment and development of the individualized education program" (IEP) means  
20 services described in Education Code sections 56320 et seq. and 56340 et seq.

21           (c) "Behavioral emergency" is the demonstration of a serious behavior problem: (1)  
22 which has not previously been observed and for which a behavioral intervention plan has not  
23 been developed; or (2) for which a previously designed behavioral intervention is not effective.  
24 Approved behavioral emergency procedures must be outlined in the special education local  
25 planning area (SELPA) local plan.

26           (d) "Behavioral intervention" means the systematic implementation of procedures that  
27 result in lasting positive changes in the individual's behavior. "Behavioral intervention" means  
28 the design, implementation, and evaluation of individual or group instructional and  
29 environmental modifications, including programs of behavioral instruction, to produce  
30 significant improvements in human behavior through skill acquisition and the reduction of  
31 problematic behavior. "Behavioral interventions" are designed to provide the individual with

1 greater access to a variety of community settings, social contacts and public events; and ensure  
2 the individual's right to placement in the least restrictive educational environment as outlined in  
3 the individual's IEP. "Behavioral interventions" do not include procedures which cause pain or  
4 trauma. "Behavioral interventions" respect the individual's human dignity and personal privacy.  
5 Such interventions shall assure the individual's physical freedom, social interaction, and  
6 individual choice.

7 (e) "Behavioral intervention case manager" means a designated certificated  
8 school/district/county/nonpublic school or agency staff member(s) or other qualified personnel  
9 pursuant to subsection (ac) contracted by the school district or county office or nonpublic school  
10 or agency who has been trained in behavior analysis with an emphasis on positive behavioral  
11 interventions. The "behavioral intervention case manager" is not intended to be a new staffing  
12 requirement and does not create any new credentialing or degree requirements. The duties of the  
13 "behavioral intervention case manager" may be performed by any existing staff member trained  
14 in behavior analysis with an emphasis on positive behavioral interventions, including, but not  
15 limited to, a teacher, resource specialist, school psychologist, or program specialist.

16 (f) "Behavioral intervention plan" is a written document which is developed when the  
17 individual exhibits a serious behavior problem that significantly interferes with the  
18 implementation of the goals and objectives of the individual's IEP. The "behavioral intervention  
19 plan" shall become part of the IEP. The plan shall describe the frequency of the consultation to  
20 be provided by the behavioral intervention case manager to the staff members and parents who  
21 are responsible for implementing the plan. A copy of the plan shall be provided to the person or  
22 agency responsible for implementation in noneducational settings. The plan shall include the  
23 following:

24 (1) a summary of relevant and determinative information gathered from a functional  
25 analysis assessment;

26 (2) an objective and measurable description of the targeted maladaptive behavior(s) and  
27 replacement positive behavior(s);

28 (3) the individual's goals and objectives specific to the behavioral intervention plan;

29 (4) a detailed description of the behavioral interventions to be used and the  
30 circumstances for their use;

31 (5) specific schedules for recording the frequency of the use of the interventions and the



1 frequency of the targeted and replacement behaviors; including specific criteria for discontinuing  
2 the use of the intervention for lack of effectiveness or replacing it with an identified and  
3 specified alternative;

4 (6) criteria by which the procedure will be faded or phased-out, or less intense/frequent  
5 restrictive behavioral intervention schedules or techniques will be used;

6 (7) those behavioral interventions which will be used in the home, residential facility,  
7 work site or other noneducational settings; and

8 (8) specific dates for periodic review by the IEP team of the efficacy of the program.

9 (g) "Board" means the State Board of Education.

10 (h) "Certification" means authorization by the State Superintendent of Public Instruction  
11 (Superintendent) for a nonpublic school or nonpublic agency to service individuals with  
12 exceptional needs under a contract pursuant to the provisions of Education Code section  
13 56366(c).

14 (i) "Contracting education agency," means school district, special education local plan  
15 area, or county office of education.

16 (j) "Credential" means a valid credential, life diploma, permit, or document in special  
17 education or pupil personnel services issued by, or under the jurisdiction of, the State Board of  
18 Education prior to 1970 or the California Commission on Teacher Credential, which entitles the  
19 holder thereof to perform services for which certification qualifications are required.

20 (k) "Department" means the California Department of Education.

21 (l) "Department of Consumer Affairs" means the California Department of Consumer  
22 Affairs.

23 (m) "Dual enrollment" means the concurrent attendance of the individual in a public  
24 education agency and a nonpublic school and/or a nonpublic agency.

25 (n) "Feasible" as used in Education Code section 56363(a) means the individualized  
26 education program team:

27 (1) has determined the regular class teacher, special class teacher, and/or resource  
28 specialist possesses the necessary competencies and credentials/certificates to provide the  
29 designated instruction and service specified in the individualized education program, and

30 (2) has considered the time and activities required to prepare for and provide the  
31 designated instruction and service by the regular class teacher, special class teacher, and/or

1 resource specialist.

2 (o) "Free appropriate public education" means special education and related services  
3 that:

4 (1) have been provided at public expense, under public supervision and direction and  
5 without charge;

6 (2) meets any of the standards established by state or federal law;

7 (3) include an appropriate preschool, elementary, or secondary school education in  
8 California; and

9 (4) are provided in conformity with the individualized education program required under  
10 state and federal law.

11 (p) "Individual Services Agreement" means a document, prepared by the local education  
12 agency, that specifies the length of time for which special education and designated instruction  
13 and services are to be provided, by nonpublic schools and/or nonpublic agencies, to individuals  
14 with exceptional needs.

15 (q) "Individuals with exceptional needs," as defined in Section 56026 of the Education  
16 Code may also mean, "a child," "child or children with a disability," "individual," "individuals  
17 with disabilities," "infant," "infants and toddlers with disabilities," "preschool child," "pupil,"  
18 "student," or "toddler" when any of those terms are used in this chapter, Part 30 (commencing  
19 with Section 56000) of the Education Code, and other related provisions of law and regulations  
20 to describe a person eligible for special education, early education, a designated instruction and  
21 services or related services, or a combination of those programs and services. "Individuals with  
22 exceptional needs" includes the federal definition of "child with a disability" in subparagraph  
23 (A) of paragraph (3) of Section 1401 of Title 20 of the United States Code and in Section 300.7  
24 of Title 34 of the Code of Federal Regulations.

25 ~~(q)~~(r) "Instructional day" shall be the same period of time as regular school day for that  
26 chronological peer group unless otherwise specified in the individualized education program.

27 ~~(r)~~(s) "License" means a valid nonexpired document issued by a licensing agency within  
28 the Department of Consumer Affairs or other state licensing office authorized to grant licenses  
29 and authorizing the bearer of the document to provide certain professional services or refer to  
30 themselves using a specified professional title. If a license is not available through an appropriate  
31 state licensing agency, a certificate of registration with the appropriate professional organization

1 at the national or state level which has standards established for the certificate that are equivalent  
2 to a license shall be deemed to be a license.

3 ~~(s)~~(t) "Linguistically appropriate goals, objectives, and programs" means:

4 (1)(A) Those activities which lead to the development of English language proficiency;

5 and

6 (B) Those instructional systems either at the elementary or secondary level which meet  
7 the language development needs of the limited English language learner.

8 (2) For individuals whose primary language is other than English, and whose potential for  
9 learning a second language, as determined by the individualized education program team, is  
10 severely limited, nothing in this section shall preclude the individualized education program  
11 team from determining that instruction may be provided through an alternative program pursuant  
12 to a waiver under Education Code section 311(c), including a program provided in the  
13 individual's primary language, provided that the IEP team periodically, but not less than  
14 annually, reconsiders the individual's ability to receive instruction in the English language.

15 ~~(t)~~(u) "Local education agency" means a public board of education or other public  
16 authority legally constituted in California for either administrative control or direction of, or to  
17 perform a service function for, public elementary or secondary schools in a city, county,  
18 township, school district, or other political subdivision of California, or such combination of  
19 school districts or counties as are recognized in California as an administrative agency for its  
20 public elementary or secondary schools.

21 ~~(u)~~(v) "Local governing board," means either district or county board of education.

22 ~~(v)~~(w) "Master contract" means the legal document that binds the public education  
23 agency and the nonpublic school or nonpublic agency.

24 ~~(w)~~(x) "Nonsectarian" means a private, nonpublic school or agency that is not owned,  
25 operated, controlled by, or formally affiliated with a religious group or sect, whatever might be  
26 the actual character of the education program or the primary purpose of the facility and whose  
27 articles of incorporation and/or by-laws stipulate that the assets of such agency or corporation  
28 will not inure to the benefit of a religious group.

29 ~~(x)~~(y) "Personally identifiable", as used in this chapter, Article 3.5 (commencing with  
30 Section 440) of this title, and Part 30 (commencing with Section 56000) of the Education Code  
31 and pursuant to paragraph (3) of Section (b) of Section 300.500 of the Code of Federal

1 Regulations, means information that includes the following:

2 (a) The name of the child, the child's parent, or other family member.

3 (b) The address of the child.

4 (c)(1) A personal identifier, such as the child's social security number or student number,

5 or

6 (2) A list of personal characteristics or other information that would make it possible to  
7 identify the child with reasonable certainty.

8 ~~(x)~~(z) "Primary language" means the language other than English, or other mode of  
9 communication, the person first learned, or the language which is spoken in the person's home.

10 ~~(y)~~(aa) "Qualified" means that a person has met federal and state certification, licensing,  
11 registration, or other comparable requirements which apply to the area in which he or she is  
12 providing special education or related services, or, in the absence of such requirements, the state-  
13 education-agency-approved or recognized requirements, and adheres to the standards of  
14 professional practice established in federal and state law or regulation, including the standards  
15 contained in the California Business and Professions Code. Nothing in this definition shall be  
16 construed as restricting the activities in services of a graduate needing direct hours leading to  
17 licensure, or of a student teacher or intern leading to a graduate degree at an accredited or  
18 approved college or university, as authorized by state laws or regulations.

19 ~~(z)~~(ab) "Related services" means transportation, and such developmental, corrective, and  
20 other supportive services (including speech pathology and audiology, psychological services,  
21 physical and occupational therapy, recreation, including therapeutic recreation, social work  
22 services, counseling services, including rehabilitation counseling, and medical services, except  
23 that such medical services shall be for diagnostic and evaluation purposes only) as required to  
24 assist an individual with exceptional needs to benefit from special education, and includes the  
25 early identification and assessment of disabling conditions in children. Related services include,  
26 but are not limited to, Designated Instruction and Services. The list of related services is not  
27 exhaustive and may include other developmental, corrective, or supportive services if they are  
28 required to assist a child with a disability to benefit from special education. Each related service  
29 defined under this part may include appropriate administrative and supervisory activities that are  
30 necessary for program planning, management, and evaluation.

31 ~~(aa)~~(ac) "Serious behavior problems" means the individual's behaviors which are self-

1 injurious, assaultive, or cause serious property damage and other severe behavior problems that  
2 are pervasive and maladaptive for which instructional/behavioral approaches specified in the  
3 student's IEP are found to be ineffective.

4 ~~(ab)~~(ad) "Specified education placement" means that unique combination of facilities,  
5 personnel, location or equipment necessary to provide instructional services to an individual with  
6 exceptional needs, as specified in the IEP, in any one or a combination of public, private, home  
7 and hospital, or residential setting. The IEP team shall document its rationale for placement in  
8 other than the pupil's school and classroom in which the pupil would otherwise attend if the pupil  
9 were not disabled. The documentation shall indicate why the pupil's disability prevents his or  
10 her needs from being met in a less restrictive environment even with the use of supplementary  
11 aids and services.

12 ~~(ae)~~(ae) "Special education" means specially designed instruction, at no cost to the  
13 parents, to meet the unique needs of individuals with exceptional needs whose educational needs  
14 cannot be met with modification of the regular instruction program, and related services, at no  
15 cost to the parent, that may be needed to assist these individuals to benefit from specially  
16 designed instruction.

17 ~~(ad)~~(af) "Specialized physical health care services" means those health services  
18 prescribed by the individual's licensed physician and surgeon requiring medically related training  
19 for the individual who performs the services and which are necessary during the school day to  
20 enable the individual to attend school.

21 ~~(ae)~~(ag) "Superintendent" means the State Superintendent of Public Instruction.

22 ~~(af)~~(ah) "Temporary physical disability" means a disability incurred while an individual  
23 was in a regular education class and which at the termination of the temporary physical  
24 disability, the individual can, without special intervention, reasonably be expected to return to his  
25 or her regular education class.

26 NOTE: Authority cited: Sections 56100(a), (i) and 56523(a), Education Code. Reference:  
27 Sections 33000, 33300, 49423.5, 56026, 56034, 56320, 56361, 56366, 56520 and 56523,  
28 Education Code; Section 2, Article IX, Constitution of the State of California; 20 USC  
29 1401(3)(A), (8), ~~(17)(26)~~, and 1415(a), United States Code, Title 20; and Sections 34 CFR 300.4,  
30 300.7, and ~~300.12, 300.13, 300.24, and 300.500.~~ Code of Federal Regulations, Title 34.

1 **Add Section 3015 of Title 5 to read:**

2 **Article 2. Administration**

3 **§3015. Ongoing Review of Programs by Special Education Local Plan Areas.**

4 (a) Each single district special education local plan area established in accordance with  
5 subdivision (b) of Section 56195.1 shall have a written procedure for the provision for ongoing  
6 review of programs conducted, and procedures utilized, under the local plan, and a mechanism  
7 for correcting any identified problem.

8 (b) Multidistrict special education local plan areas established in accordance with  
9 subdivision (b) of Section 56195.1 and a district or districts joined with the county office of  
10 education in accordance with subdivision (c) of Section 56195.1 shall have a written agreement  
11 entered into by entities participating in the local plan that includes a provision for ongoing  
12 review of programs conducted, and procedures utilized, under the local plan, and a mechanism  
13 for correcting any identified problem pursuant to paragraph (6) of subdivision (c) of Section  
14 56195.7 of the Education Code.

15 (c) The written procedure referenced in subdivision (a) and the written agreement  
16 referenced in subdivision (b) need not be submitted to the superintendent but shall be available  
17 upon request by the department.

18 NOTE: Authority cited: Section 56100(a), (i), Education Code; 20 USC 1412(a)(5), (11); 20  
19 USC 1413(a)(6); 34 CFR 300.556 and 34 CFR 300.240. Reference: Sections 56125, 56132,  
20 56195.1 and 56195.7, Education Code; 20 USC 1413(a); and 34 CFR 300.182, 300.197 and  
21 300.220.

22  
23 **Add Section 3020 of Title 5 to read:**

24 **Article 3. Identification, Referral, and Assessment**

25 **§3020. Child Find and Identification.**

26 (a) Child find and identification requirements in Sections 56300, 56301, and 56302 of the  
27 Education Code also apply to highly mobile individuals with exceptional needs, such as migrant  
28 and homeless children, and children who are suspected of being an individual with exceptional  
29 needs under Section 56026 and in need of special education, even though they are advancing  
30 from grade to grade.

31 (b) Child find data collected pursuant to Sections 56300 and 56301 of the Education

Code, or collected pursuant to a regulation or an interagency agreement, are subject to the confidentiality requirements of Section 300.125 and Sections 300.560-300.577 of Title 34 of the Code of Federal Regulations.

NOTE: Authority cited: Sections 56100(a), (i), Education Code. Reference: Sections 56300 and 56301, Education Code; 20 USC 1412(a)(3)(A) and (B); 34 CFR 300.125 and 300.560-300.

**Add Section 3032 of Title 5 to read:**

**Article 3.1. Individuals with Exceptional Needs**

**§3032. Confidentiality of Information about Individuals with Exceptional Needs.**

(a) Any personally identifiable information collected, used, or maintained by public agencies within the State, as defined in Section 300.2 of Title 34 of the Code of Federal Regulations, under Part 30 (commencing with Section 56000) of the Education Code and implementing regulations, or maintained under Title 20 (commencing with Section 1400) of the United States Code and implementing regulations, shall be subject to the provisions of Chapter 6.5 (commencing with Section 49060) of the Education Code and implementing regulations, including Article 3.5 (commencing with Section 440) of Subchapter 2 of Chapter 2 of Division 1 of Title 5 of the California Code of Regulations.

(b) The information referenced in subdivision (a) is also covered by the provisions of the federal Family Educational Rights and Privacy Act (FERPA) in Section 1232g of Title 20 of the United States Code and Part 99 (commencing with Section 99.1) of Title 34 of the Code of Federal Regulations.

NOTE: Authority cited: Section 56100(a), (i), Education Code. Reference: Chapter 6.5 (commencing with Section 49060), Sections 56501, 56504, 56366.4 and 56863, Education Code; Article 3.5 (commencing with Section 440) of Subchapter 2, Chapter 2, Division 1, 5, and Sections 3024, 3051.12 and 4663 of Title 5, California Code of Regulations; 20 USC 1221e-3, 1412(a)(8), 1417(c); and 34 CFR 300.127, and 300.560-300.577.

**Add Section 3041 of Title 5 to read:**

**Article 4. Instructional Planning and Individualized Education Program**

**§3041. Individualized Education Program Accountability.**

Each public agency referenced in Section 300.2 of Title 34 of the Code of Federal

1 Regulations, shall make a good faith effort to assist each individual with exceptional needs to  
2 achieve the goals and objectives or benchmarks listed in the individualized education program in  
3 accordance with Section 300.350 of Title 34 of the Code of Federal Regulations and Section  
4 56345 of the Education Code.

5 NOTE: Authority: Section 56100(a), (i), Education Code. Reference: 56345, Education Code;  
6 20 USC 1414(d); and 34 CFR 300.350.

7  
8 **Add Section 3044 of Title 5 to read:**

9 **§3044. Free Appropriate Public Education for Individuals with Exceptional Needs**

10 **Advancing from Grade to Grade.**

11 (a) Pursuant to subsection (e) of Section 300.121 of the Code of Federal Regulations,  
12 each local educational agency shall ensure that a free appropriate public education is available to  
13 any individual with exceptional needs who needs special education and related services, even  
14 though the individual is advancing from grade to grade.

15 (b) The determination that an individual with exceptional needs described in subdivision  
16 (a) is eligible under Part 30 (commencing with Section 56000) of the Education Code, shall be  
17 made on an individual basis by an individualized education program team.

18 NOTE: Authority cited: Section 56100(a),(i), Education Code. Reference: Sections 56000 and  
19 56040, Education Code; 20 USC 1412(a)(1); and 34 CFR 300.121.

20  
21 **Amend Section 3052 of Title 5 to read:**

22 **Article 5. Implementation (Program Components)**

23 **§3052. Designated Positive Behavioral Interventions.**

24 (a) General Provisions.

25 (1) An IEP team shall facilitate and supervise all assessment, intervention, and evaluation  
26 activities related to an individual's behavioral intervention plan. When the behavioral  
27 intervention plan is being developed, the IEP team shall be expanded to include the behavioral  
28 intervention case manager with documented training in behavior analysis including positive  
29 behavioral intervention(s), qualified personnel knowledgeable of the student's health needs, and  
30 others as described in Education Code §section 56341(c)(2). The behavioral intervention case  
31 manager is not intended to be a new staff person and may be an existing staff member trained in



1 behavior analysis with an emphasis on positive behavioral interventions.

2 (2) Behavioral intervention plans shall only be implemented by, or be under the  
3 supervision of, staff with documented training in behavior analysis, including the use of positive  
4 behavioral interventions. Such interventions shall only be used to replace specified maladaptive  
5 behavior(s) with alternative acceptable behavior(s) and shall never be used solely to eliminate  
6 maladaptive behavior(s).

7 (3) Behavioral intervention plans shall be based upon a functional analysis assessment,  
8 shall be specified in the individualized education program, and shall be used only in a systematic  
9 manner in accordance with the provisions of this section.

10 (4) Behavioral emergency interventions shall not be used as a substitute for behavioral  
11 intervention plans.

12 (5) The elimination of any maladaptive behavior does not require the use of intrusive  
13 behavioral interventions that cause pain or trauma.

14 (6) To the extent possible, behavioral intervention plans shall be developed and  
15 implemented in a consistent manner appropriate to each of the individual's life settings.

16 (b) Functional Analysis Assessments. A functional analysis assessment must be  
17 conducted by, or be under the supervision of a person who has documented training in behavior  
18 analysis with an emphasis on positive behavioral interventions. A functional analysis assessment  
19 shall occur after the individualized education program team finds that instructional/behavioral  
20 approaches specified in the student's IEP have been ineffective. Nothing in this section shall  
21 preclude a parent or legal guardian from requesting a functional analysis assessment pursuant to  
22 the provisions of Education Code sections 56320 et seq.

23 Functional analysis assessment personnel shall gather information from three sources:  
24 direct observation, interviews with significant others, and review of available data such as  
25 assessment reports prepared by other professionals and other individual records. Prior to  
26 conducting the assessment, parent notice and consent shall be given and obtained pursuant to  
27 Education Code §section 56321.

28 (1) A functional analysis assessment procedure shall include all of the following:

29 (A) Systematic observation of the occurrence of the targeted behavior for an accurate  
30 definition and description of the frequency, duration, and intensity;

31 (B) Systematic observation of the immediate antecedent events associated with each

1 instance of the display of the targeted inappropriate behavior;

2 (C) Systematic observation and analysis of the consequences following the display of the  
3 behavior to determine the function the behavior serves for the individual, i.e., to identify the  
4 specific environmental or physiological outcomes produced by the behavior. The  
5 communicative intent of the behavior is identified in terms of what the individual is either  
6 requesting or protesting through the display of the behavior;

7 (D) Ecological analysis of the settings in which the behavior occurs most frequently.  
8 Factors to consider should include the physical setting, the social setting, the activities and the  
9 nature of instruction, scheduling, the quality of communication between the individual and staff  
10 and other students, the degree of independence, the degree of participation, the amount and  
11 quality of social interaction, the degree of choice, and the variety of activities;

12 (E) Review of records for health and medical factors which may influence behaviors (e.g.  
13 medication levels, sleep cycles, health, diet); and

14 (F) Review of the history of the behavior to include the effectiveness of previously used  
15 behavioral interventions.

16 (2) Functional Analysis Assessment Reports. Following the assessment, a written report  
17 of the assessment results shall be prepared and a copy shall be provided to the parent. The report  
18 shall include all of the following:

19 (A) A description of the nature and severity of the targeted behavior(s) in objective and  
20 measurable terms;

21 (B) A description of the targeted behavior(s) that includes baseline data and an analysis  
22 of the antecedents and consequences that maintain the targeted behavior, and a functional  
23 analysis of the behavior across all appropriate settings in which it occurs;

24 (C) A description of the rate of alternative behaviors, their antecedents and consequences;  
25 and

26 (D) Recommendations for consideration by the IEP team which may include a proposed  
27 plan as specified in Section 3001(f).

28 (c) IEP Team Meeting. Upon completion of the functional analysis assessment, an IEP  
29 team meeting shall be held to review results and, if necessary, to develop a behavioral  
30 intervention plan, as defined in Article 1, Section 3001(f) of these regulations. The IEP team  
31 shall include the behavioral intervention case manager. The behavioral intervention plan shall

1 become a part of the IEP and shall be written with sufficient detail so as to direct the  
2 implementation of the plan.

3 (d) Intervention. Based upon the results of the functional analysis assessment, positive  
4 programming for behavioral intervention may include the following:

5 (1) Altering the identified antecedent event to prevent the occurrence of the behavior  
6 (e.g., providing choice, changing the setting, offering variety and a meaningful curriculum,  
7 removing environmental pollutants such as excessive noise or crowding, establishing a  
8 predictable routine for the individual);

9 (2) Teaching the individual alternative behaviors that produce the same consequences as  
10 the inappropriate behavior (e.g., teaching the individual to make requests or protests using  
11 socially acceptable behaviors, teaching the individual to participate with alternative  
12 communication modes as a substitute for socially unacceptable attention-getting behaviors,  
13 providing the individual with activities that are physically stimulating as alternatives for  
14 stereotypic, self-stimulatory behaviors);

15 (3) Teaching the individual adaptive behaviors (e.g., choice-making, self-management,  
16 relaxation techniques, and general skill development) which ameliorate negative conditions that  
17 promote the display of inappropriate behaviors; and

18 (4) Manipulating the consequences for the display of targeted inappropriate behaviors  
19 and alternative, acceptable behaviors so that it is the alternative behaviors that more effectively  
20 produce desired outcomes (i.e., positively reinforcing alternative and other acceptable behaviors  
21 and ignoring or redirecting unacceptable behaviors).

22 (e) Acceptable Responses. When the targeted behavior(s) occurs, positive response  
23 options shall include, but are not limited to one or more of the following:

24 (1) the behavior is ignored, but not the individual;

25 (2) the individual is verbally or verbally and physically redirected to an activity;

26 (3) the individual is provided with feedback (e.g., "You are talking too loudly");

27 (4) the message of the behavior is acknowledged (e.g., "You are having a hard time with  
28 your work"); or

29 (5) a brief, physical prompt is provided to interrupt or prevent aggression, self-abuse, or  
30 property destruction.

31 (f) Evaluation of the Behavioral Intervention Plan Effectiveness. Evaluation of the

effectiveness of the behavioral intervention plan shall be determined through the following procedures:

(1) Baseline measure of the frequency, duration, and intensity of the targeted behavior, taken during the functional analysis assessment. Baseline data shall be taken across activities, settings, people, and times of the day. The baseline data shall be used as a standard against which to evaluate intervention effectiveness;

(2) Measures of the frequency, duration, and intensity of the targeted behavior shall be taken after the behavioral intervention plan is implemented at scheduled intervals determined by the IEP team. These measures shall also be taken across activities, settings, people, and times of the day, and may record the data in terms of time spent acting appropriately rather than time spent engaging in the inappropriate behavior;

(3) Documentation of program implementation as specified in the behavioral intervention plan (e.g., written instructional programs and data, descriptions of environmental changes); and

(4) Measures of program effectiveness will be reviewed by the teacher, the behavioral intervention case manager, parent or care provider, and others as appropriate at scheduled intervals determined by the IEP team. This review may be conducted in meetings, by telephone conference, or by other means, as agreed upon by the IEP team.

(5) If the IEP team determines that changes are necessary to increase program effectiveness, the teacher and behavioral intervention case manager shall conduct additional functional analysis assessments and, based on the outcomes, shall propose changes to the behavioral intervention plan.

~~(g) Modifications without IEP Team Meeting. Minor modifications to the behavioral intervention plan can be made by the behavioral intervention case manager and the parent or parent representative. If the case manager is unavailable, a qualified designee who meets the training requirements of subsection (a)(1) shall participate in such modifications. Each modification or change shall be addressed in the behavioral intervention plan provided that the parent, or parent representative, is notified of the need and is able to review the existing program evaluation data prior to implementing the modification or change. Parents shall be informed of their right to question any modification to the plan through the IEP procedures. Modifications. If a positive behavior intervention plan is developed by the IEP team following a functional analysis assessment, the IEP team must specify which future changes would constitute a~~

1 modification of the positive behavioral intervention plan requiring an IEP team meeting, and  
2 which future minor changes in staff implementation of the positive behavioral intervention plan  
3 would not be considered a modification and can be utilized on an on-going basis in the manner  
4 specified in the IEP.

5 (h) Contingency Behavioral Intervention Plans. Nothing in this section is intended to  
6 preclude the IEP team from initially developing the behavioral intervention plan in sufficient  
7 detail to include schedules for altering specified procedures, or the frequency or duration of the  
8 procedures, without the necessity for reconvening the IEP team. Where the intervention is to be  
9 used in multiple settings, such as the classroom, home and job sites, those personnel responsible  
10 for implementation in the other sites must also be notified and consulted prior to the change.

11 (i) Emergency Interventions. Emergency interventions may only be used to control  
12 unpredictable, spontaneous behavior which poses clear and present danger of serious physical  
13 harm to the individual or others and which cannot be immediately prevented by a response less  
14 restrictive than the temporary application of a technique used to contain the behavior.

15 (1) Emergency interventions shall not be used as a substitute for the systematic  
16 behavioral intervention plan that is designed to change, replace, modify, or eliminate a targeted  
17 behavior.

18 (2) Whenever a behavioral emergency occurs, only behavioral emergency interventions  
19 approved by the special education local planning area (SELPA) may be used.

20 (3) No emergency intervention shall be employed for longer than is necessary to contain  
21 the behavior. Any situation which requires prolonged use of an emergency intervention shall  
22 require staff to seek assistance of the school site administrator or law enforcement agency, as  
23 applicable to the situation.

24 (4) Emergency interventions may not include:

25 (A) Locked seclusion, unless it is in a facility otherwise licensed or permitted by state law  
26 to use a locked room;

27 (B) Employment of a device or material or objects which simultaneously immobilize all  
28 four extremities, except that techniques such as prone containment may be used as an emergency  
29 intervention by staff trained in such procedures; and

30 (C) An amount of force that exceeds that which is reasonable and necessary under the  
31 circumstances.

1 (5) To prevent emergency interventions from being used in lieu of planned, systematic  
2 behavioral interventions, the parent and residential care provider, if appropriate, shall be notified  
3 within one school day whenever an emergency intervention is used or serious property damage  
4 occurs. A "Behavioral Emergency Report" shall immediately be completed and maintained in  
5 the individual's file. The report shall include all of the following:

6 (A) The name and age of the individual;

7 (B) The setting and location of the incident;

8 (C) The name of the staff or other persons involved;

9 (D) A description of the incident and the emergency intervention used, and whether the  
10 individual is currently engaged in any systematic behavioral intervention plan; and

11 (E) Details of any injuries sustained by the individual or others, including staff, as a result  
12 of the incident.

13 (6) All "Behavioral Emergency Reports" shall immediately be forwarded to, and  
14 reviewed by, a designated responsible administrator.

15 (7) Anytime a "Behavioral Emergency Report" is written regarding an individual who  
16 does not have a behavioral intervention plan, the designated responsible administrator shall,  
17 within two days, schedule an IEP team meeting to review the emergency report, to determine the  
18 necessity for a functional analysis assessment, and to determine the necessity for an interim  
19 behavioral intervention plan. The IEP team shall document the reasons for not conducting the  
20 assessment and/or not developing an interim plan.

21 (8) Anytime a "Behavioral Emergency Report" is written regarding an individual who has  
22 a behavioral intervention plan, any incident involving a previously unseen serious behavior  
23 problem or where a previously designed intervention is not effective should be referred to the  
24 IEP team to review and determine if the incident constitutes a need to modify the plan.

25 (9) "Behavioral Emergency Report" data shall be collected by SELPAs which shall report  
26 annually the number of Behavioral Emergency Reports to the California Department of  
27 Education and the Advisory Commission on Special Education.

28 (j) SELPA Plan. The local plan of each SELPA shall include procedures governing the  
29 systematic use of behavioral interventions and emergency interventions. These procedures shall  
30 be part of the SELPA local plan.

31 (1) Upon adoption, these procedures shall be available to all staff members and parents

1 whenever a behavioral intervention plan is proposed.

2 (2) At a minimum, the plan shall include:

3 (A) The qualifications and training of personnel to be designated as behavioral  
4 intervention case managers, which shall include training in behavior analysis with an emphasis  
5 on positive behavioral interventions, who will coordinate and assist in conducting the functional  
6 analysis assessments and the development of the behavioral intervention plans;

7 (B) The qualifications and training required of personnel who will participate in the  
8 implementation of the behavioral intervention plans; which shall include training in positive  
9 behavioral interventions;

10 (C) Special training that will be required for the use of emergency behavioral  
11 interventions and the types of interventions requiring such training; and

12 (D) Approved behavioral emergency procedures.

13 (k) Nonpublic School Policy. Nonpublic schools and agencies, serving individuals  
14 pursuant to Education Code §section 56365 et seq., shall develop policies consistent with those  
15 specified in subsection (i) of this section.

16 (l) Prohibitions. No public education agency, or nonpublic school or agency serving  
17 individuals pursuant to Education Code §section 56365 et seq., may authorize, order, consent to,  
18 or pay for any of the following interventions, or any other interventions similar to or like the  
19 following:

20 (1) Any intervention that is designed to, or likely to, cause physical pain;

21 (2) Releasing noxious, toxic or otherwise unpleasant sprays, mists, or substances in  
22 proximity to the individual's face;

23 (3) Any intervention which denies adequate sleep, food, water, shelter, bedding, physical  
24 comfort, or access to bathroom facilities;

25 (4) Any intervention which is designed to subject, used to subject, or likely to subject the  
26 individual to verbal abuse, ridicule or humiliation, or which can be expected to cause excessive  
27 emotional trauma;

28 (5) Restrictive interventions which employ a device or material or objects that  
29 simultaneously immobilize all four extremities, including the procedure known as prone  
30 containment, except that prone containment or similar techniques may be used by trained  
31 personnel as a limited emergency intervention pursuant to subsection (i);

1 (6) Locked seclusion, except pursuant to subsection (i)(4)(A);  
2 (7) Any intervention that precludes adequate supervision of the individual; and  
3 (8) Any intervention which deprives the individual of one or more of his or her senses.  
4 (m) Due Process Hearings. The provisions of this chapter related to functional analysis  
5 assessments and the development and implementation of behavioral intervention plans are  
6 subject to the due process hearing procedures specified in Education Code Section 56501 et seq.  
7 No hearing officer may order the implementation of a behavioral intervention that is otherwise  
8 prohibited by this section, by SELPA policy, or by any other applicable statute or regulation.  
9 (n) The term “functional analysis assessment,” as used in subdivision (b), does not have  
10 the same meaning as a “functional behavioral assessment” required in clause (i) of subparagraph  
11 (B) of paragraph (1) of subdivision (j) of Section 1415 of Title 20 of the United States Code and  
12 in clause (i) of paragraph (1) of subsection (b) of Section 300.520 of Title 34 of the Code of  
13 Federal Regulations for discipline purposes.  
14 NOTE: Authority cited: Section 56100(a), (i) and 56523, Education Code. Reference:  
15 Sections 56520-56524, Education Code; Section 3001(c),(d),(e) and (f) of Title 5, California  
16 Code of Regulations; 20 USC 1413(a)(1), 1414(d)(4)(A), 1415(k)(1),(10); and 34 CFR 300.343  
17 and 300.520(b),(c).

18

19 **Amend Section 3080 of Title 5 to read:**

20 **Article 7. Procedural Safeguards**

21 **§3080. General Provisions.**

22 (a) Sections 4600 through 4671 apply to the filing of a complaint, in accordance with  
23 provisions of Title 34, Code of Federal Regulations, Section 76.780-783, regarding a public  
24 agency's alleged violation of federal or state law or regulation relating to the provision of a free  
25 appropriate public education.

26 (b) Section 3082 applies to due process hearing procedures which the resolution of  
27 disagreements between a parent and a public agency regarding the proposal, or refusal of a  
28 public agency to initiate or change the identification, assessment, or educational placement of the  
29 pupil or the provision of a free appropriate public education to the pupil.

30 (c)(1) In accordance with Section 300.457 of Title 34 of the Code of Federal Regulations,  
31 the due process procedures in Chapter 5 (commencing with Section 56500) and this article do



1 not apply to complaints that a district, special education local plan area, or county office of  
2 education has failed to meet the requirements of Article 5.6 (commencing with Section 56170) of  
3 Chapter 2 of Part 30 of the Education Code, pertaining to children enrolled in private schools by  
4 a parent, including the provision of services indicated on the child's service plan.

5 (2) Due process procedures are limited to child find requirements and procedures for  
6 assessment for determining eligibility pursuant to subsection (b) of Section 300.457 of Title 34  
7 of the Code of Federal Regulations.

8 (3) Complaints that the state or district, special education local plan area, or county  
9 office of education has failed to meet the requirements of Article 5.6 (commencing with Section  
10 56170) of Chapter 2 of Part 30 of the Education Code may be filed under Chapter 5.1  
11 (commencing with Section 4600) of Title 5 of the California Code of Regulations.

12 NOTE: Authority cited: Section 56100(a) and (j), Education Code. Reference: Sections 56170-  
13 56177, ~~56500.1~~ and ~~56500.2~~ 56500-56508, Education Code; Chapter 5.1 (commencing with  
14 Section 4600) of Title 5, California Code of Regulations; 20 USC 1412(a)(10)(A); and 34 CFR  
15 76.780-783 and 300.450-487.

16  
17 **Amend Section 3082 of Title 5 to read:**

18 **§3082. Due Process Hearing Procedures.**

19 (a) A parent or public education agency may initiate a hearing pursuant to Education  
20 Code ~~§~~sections 56500 through 56507 and Title 34, Code of Federal Regulations, Sections  
21 300.506 through 300.514 on any of the matters described in Education Code ~~§~~section 56501.  
22 The hearing shall be conducted by a hearing officer knowledgeable in administrative hearings  
23 and under contract with the State Department of Education.

24 (b) The hearings conducted pursuant to this section shall not be conducted according to  
25 the technical rules of evidence and those related to witnesses. Any relevant evidence shall be  
26 admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the  
27 conduct of serious affairs, regardless of the existence of any common law or statutory rule,  
28 which might make improper the admission of such evidence over objection in civil actions.  
29 Hearsay evidence may be used for the purpose of supplementing or explaining other evidence  
30 but shall not be sufficient in itself to support a finding unless it would be admissible over  
31 objection in civil actions. All testimony shall be under oath or affirmation which the hearing

1 officer is empowered to administer.

2 (c) In addition to the rights afforded both parties to the hearing pursuant to Education  
3 Code §§sections 56500-56507 and Title 34, Code of Federal Regulations, Section 300.514, the  
4 parties shall also have the following rights:

5 (1) To call witnesses, including adverse witnesses, and to cross examine witnesses for the  
6 other party.

7 (2) To compel the attendance of witnesses. The hearing officer shall have the right to  
8 issue Subpoenas (order to appear and give testimony) and Subpoenas Duces Tecum (order to  
9 produce document(s) or paper(s) upon a showing of reasonable necessity by a party).

10 (3) Absent compelling circumstances to the contrary, and upon motion to the hearing  
11 officer to have witnesses excluded from the hearing.

12 (d) Hearings shall be conducted in the English language; when the primary language of a  
13 party to a hearing is other than English, or other mode of communication, an interpreter shall be  
14 provided who is competent as determined by the hearing officer. Cost for an interpreter shall be  
15 borne by the State Department of Education. Interpreters shall take an oath to interpret fully and  
16 accurately.

17 (e) If either the school district or the parents have an attorney present as an observer, the  
18 attorney may watch the proceedings to advise his party at a later date, but the attorney may not  
19 present oral argument, written argument or evidence, or consult in any manner in or out of the  
20 room, during the due process hearing.

21 (f) Notwithstanding Government Code section 11425.10(a)(3) of the Administrative  
22 Procedure Act, special education due process hearings are open/closed to the public at the  
23 discretion of the parent.

24 (g) Notwithstanding Government Code section 11440.30 of the Administrative Procedure  
25 Act, the hearing officer may conduct all or part of a hearing by telephone, television, or other  
26 electronic means if each participant in the hearing has an opportunity to participate in and to hear  
27 the entire proceeding while it is taking place and to observe exhibits.

28 (h) Pursuant to subsection (d) of Section 300.502 of the Code of Federal Regulations, if a  
29 hearing officer requests an independent educational assessment as part of a hearing, the cost of  
30 the assessment shall be at public expense.

31 NOTE: Authority cited: Section 56100(a) and (j) and 56505, Education Code; Section

1 300.502(d). Reference: Sections 56500-56507, Education Code; Sections 11425.10 and  
2 11440.30, Government Code; 20 USC 1415(b)(1),(2); and 34 CFR 300.507-300.514. Sections  
3 1415(b)(2) and (e), U.S. Code, Title 20; and Sections 300.506-300.513, Code of Federal  
4 Regulations, Title 34.

5  
6 **Amend Section 3082.1 of Title 5 to read:**

7 **§3082.1. Parent Notice Requesting a Due Process Hearing.**

8 (a) The notice for a due process hearing requested by a parent, guardian, or an attorney  
9 representing the child, filed in accordance with Sections 56501 and 56502 of the Education  
10 Code, must remain confidential pursuant to subsection (c) of Section 300.507 of Title 30 of the  
11 Code of Federal Regulations.

12 (b) A model form shall be developed by the superintendent, in accordance with paragraph  
13 (3) of subsection (c) of Section 300.507 of Title 34 of the Code of Federal Regulations, to assist  
14 parents and guardians in filing a request for a due process hearing, pursuant to subdivision (b) of  
15 Section 56502 and paragraph (2) of subsection (c) of Section 300.507 of Title 34 of the Code of  
16 Federal Regulations. The model form shall include:

17 (1) The name of the child.

18 (2) The address of the residence of the child.

19 (3) The name of the school the child is attending.

20 (4) A description of the nature of the problem of the child relating to the proposed or  
21 refused initiation or change, including facts relating to the problem.

22 (5) A proposed resolution of the problem to the extent known and available to the parents  
23 or guardians at the time.

24 (c) In accordance with paragraph (4) of subsection (c) of Section 300.507 of Title 34 of  
25 the Code of Federal Regulations, a parent's or guardian's right to a due process hearing may not  
26 be denied or delayed for failure to provide the notice required for requesting a due process  
27 hearing pursuant to subdivision (b) of Section 56502 of the Education Code and this section.

28 NOTE: Authority cited: Section 56100(a), (i), Education Code. Reference: Sections 56501 and  
29 56502, Education Code; 20 USC 1415(b)(5)-(b)(8), (e)(1), (f)(1); and 34 CFR 300.507.

1 **Add Section 3082.5 of Title 5 to read:**

2 **§3082.5. Due Process Hearing Officers.**

3 (a) A due process hearing officer, hired pursuant to Section 56504.5 of the Education  
4 Code, shall be knowledgeable in administrative hearings and laws and regulations governing  
5 special education.

6 (b) A due process hearing, in accordance with Section 300.508 of Title 34 of the Code of  
7 Federal Regulations, shall not be conducted by the following individuals:

8 (1) By a person who is an employee of a State agency or local educational agency that is  
9 involved in the education of the child.

10 (2) By a person having a personal or professional interest that would conflict with his or  
11 her objectivity in the hearing.

12 (c) A person who otherwise qualifies to conduct a hearing under subdivision (a) is not an  
13 employee of the agency solely because he or she is paid by the agency to serve as a hearing  
14 officer.

15 (d) The department shall maintain a list of the persons who serve as hearing officers. The  
16 list shall include a statement of the qualifications of each of those persons.

17 NOTE: Authority cited: Section 56100(a), (i), Education Code. Reference: Sections 56500-  
18 56508, Education Code; Sections 3080-3085, 3087-3089 of Title 5, California Code of  
19 Regulations; 20 USC 1415; and 34 CFR 300.507-300.511.

20  
21 **Add Section 3086.5 of Title 5 to read:**

22 **§3086.5. Mediators.**

23 (a) A mediator, hired pursuant to Section 56504.5 of the Education Code, shall be  
24 qualified and impartial, and who is trained in effective mediation techniques. The individual  
25 shall have no conflict of interest in the matter being mediated.

26 (b) The mediator shall be knowledgeable in laws and regulations relating to the provision  
27 of special education and related services.

28 (c) Mediators shall be selected on a random or rotation basis from a list of mediators  
29 maintained by the organization or entity described in Section 56504.5 of the Education Code.

30 (d) A mediation, in accordance with Section 300.506 of Title 34 of the Code of Federal  
31 Regulations, shall not be conducted by the following individuals:

1           (1) By a person who is an employee of a State agency or local educational agency  
2           described under Section 300.194 of Title 34 of the Code of Federal Regulations.

3           (2) By a State education agency that is providing direct services to a child who is subject  
4           of the mediation process.

5           (3) By a person who has a personal or professional conflict of interest.

6           (e) A person who otherwise qualifies as a mediator is not an employee of a State agency  
7           or local educational agency described under paragraph (1) of subdivision (d) solely because he or  
8           she is paid by the agency to serve as a mediator.

9           (f) The department shall maintain a list of the persons who serve as mediators. The list  
10          shall include a statement of the qualifications of each of those persons.

11          NOTE: Authority cited: Section 56100(a), (i), Education Code. Reference: Sections 56500-  
12          56508, Education Code; Section 3086 of Title 5, California Code of Regulations; 20 USC  
13          1415(e); and 34 CFR 300.506.